

REMARKS

Claims 23-35 are pending. Claims 1-6, 8, 9, 11, 12 and 20-22 have been canceled. Accordingly, no new matter has been added.

***Allowable Subject Matter***

The Examiner has indicated that claims 23-35 are allowable. However, the Examiner has indicated that the subject matter of claims 1-6, 8, 9, 11, 12 and 20-22, for reciting SEQ ID NO:8 as a reference point, relates to an independent or distinct invention and are therefore withdrawn from consideration.

Applicants acknowledge that two sets of claims are currently pending. The first set of claims, directed to claims 1-6, 8, 9, 11, 12, 20-22 are defined using SEQ ID NO:8 as a reference point. The second set of claims, claims 23-35, are the same as the first set except they use SEQ ID NO: 4 as a reference point.

SEQ ID NO:4 is the same as SEQ ID NO:8 except SEQ ID NO:4 contains an additional amino acid at position 2. This additional amino acid provides a better translational start sequence (a Kozac sequence), compared to SEQ ID NO:8. However, this is the only distinction between SEQ ID NO:4 and SEQ ID NO:8.

Further, Applicants submit that the presently pending claims should not be interpreted as being limited to solely SEQ ID NO:4.

For instance, Applicants submit that the presently pending claims only utilize SEQ ID NO:4 as a reference point. However, the actual fluorescent protein is not limited to SEQ ID NO:4 having only the recited substitutions. To further clarify this point, Applicants direct attention to claim 35 which clarifies that the substitution is being made in an amino acid sequence at positions "corresponding to" recited positions of SEQ ID NO:4. Thus, it is not SEQ ID NO:4 that is being altered, but rather, an amino acid sequence (having certain amino acid positions defined in relation to corresponding positions in SEQ ID NO:4) which is being altered.

Stated otherwise, even if claim 23 is interpreted as being limited to SEQ ID NO:4 having only substitutions at position 1 preceding the chromophore and at position 223, the same cannot be held for claim 35. Rather, in claim 35 it is a fluorescent protein comprising a green fluorescent protein within which two particular substitutions are present. One substitution is present at a position in the fluorescent protein, which position corresponds to position 65 at SEQ ID NO:4. Another substitution is being made in the fluorescent protein at the amino acid in the position corresponding to position 223 of SEQ ID NO:4. However, it is not SEQ ID NO:4 which is being altered, but rather, SEQ ID NO:4 is

simply used to provide a reference point to determine the location of the substitution in the fluorescent protein.

Accordingly, based upon this interpretation, the Examiner is technically correct that, given a narrow interpretation, claims 1 and 23 would have different scopes and therefore would be properly subject to a restriction requirement. However, the same cannot be said for claims 22 and 35. These claims are identical except they use either SEQ ID NO:8 or SEQ ID NO:4 as a reference point, respectively. However, based upon the above discussion of claim 35, these claims should technically have identical scope, thus, claim 22 is being cancelled not because it is properly restrictable, but because it arguably has identical scope to claim 35.

In view of the above, Applicants respectfully submit that the present application is in condition for allowance. Withdrawal of all rejections and allowance of the currently pending claims are respectfully requested.

If the Examiner has any questions or comments, please contact Craig A. McRobbie, Reg. No. 42,874 at the offices of Birch, Stewart, Kolasch & Birch, LLP.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

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overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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